

★ NOV 9 2023 ★

LONG ISLAND OFFICE

1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X

4 UNITED STATES OF AMERICA

5
6 - against -

7
8 RICHARD ZAGGER

9 Defendant.

10 -----X

11 THE GRAND JURY CHARGES THAT:

12 FACTUAL BACKGROUND

13
14 At all relevant times herein:

15 1. Northridge Construction Corporation (NORTHRIDGE) was a privately-owned
16 business organization, established under the laws of the State of New York in January 2016.
17 NORTHRIDGE's principal business was wood framing of single and multi-family residences,
18 and its office was located in East Patchogue, New York (the Office). Northridge Commercial,
19 Inc., an affiliate company of NORTHRIDGE, specializes in light gauge and metal framing for
20 commercial buildings.
21

22 2. Defendant Richard Zagger (ZAGGER) was a construction supervisor employed
23 by NORTHRIDGE beginning in May 2017. As a supervisor, ZAGGER was responsible for
24 ensuring the safety of NORTHRIDGE employees on a job site.
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INDICTMENT

Cr. No. **CR 23**
(T. 18, U.S.C., §§ 371, 1505, and 2)

AZRACK, J.

LINDSAY, M.J.

1 OCCUPATIONAL SAFETY AND HEALTH ACT

2 3. The United States Department of Labor (DOL), a department of the executive
3 branch of the United States Government, was responsible for the enforcement of federal laws
4 pertaining to labor and employment conditions.
5

6 4. The Occupational Safety & Health Act (OSH Act) authorized the Occupational
7 Safety & Health Administration (OSHA), an agency of the DOL, to promulgate workplace safety
8 and health standards and required employers to comply with these standards. 29 U.S.C. §§ 654,
9 655.
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11 5. Pursuant to Title 29, United States Code, Section 655, OSHA promulgated a
12 safety and health standard covering “structural steel assembly.” 29 C.F.R. § 1926.754. The
13 standard required that “structural stability shall be maintained at all times during the erection
14 process.” 29 C.F.R. § 1926.754(a).
15

16 6. An “employer” was statutorily defined at Title 29, United States Code, Section
17 652(5). NORTHRIDGE was an “employer” under the OSH Act.

18 7. An “employee” was statutorily defined at Title 29, United States Code, Section
19 652(6). Garry Cook was NORTHRIDGE’s “employee” under the OSH Act.
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21 DEATH OF NORTHRIDGE EMPLOYEE

22 8. On or about December 8, 2018, Defendant ZAGGER was supervising four
23 NORTHRIDGE employees in the construction of a 36-foot by 16-foot metal shed in the yard of
24 the Office.

25 9. To assemble the roof, metal trusses were first attached to the shed walls. Metal
26 roof panels were then placed across the spans between trusses and fastened.
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1 10. While standing on top of the partially installed roof, NORTHRIDGE employee
2 Garry Cook attempted to fasten a panel to the front truss upon which it was laid. Because the
3 truss was not yet attached to both sides of the shed, it gave way, causing employee Cook to fall
4 to the concrete pad below. Emergency medical technicians transported Cook to a hospital
5 intensive care unit where he died two days later.
6

7 **COUNT ONE**
8 **Conspiracy**
9 **(18 U.S.C. § 371)**

10 11. The allegations contained in paragraphs one through ten are realleged and
11 incorporated as if fully set forth in this paragraph.

12 12. On or about and between December 8, 2018, and March 29, 2019, both dates
13 being approximate and inclusive, within the Eastern District of New York and elsewhere, the
14 Defendant RICHARD ZAGGER, together with others, did knowingly and willfully conspire to
15 defraud the United States by impeding, impairing, obstructing, and defeating the lawful
16 government functions of OSHA, in the administration and enforcement of worker safety
17 standards and the investigation of violations of those standards.
18

19 **MANNER AND MEANS**

20 13. The manner and means by which the conspiracy was sought to be
21 accomplished included, among others, the following:
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23 (a) Inducing NORTHRIDGE employees to make false statements to the
24 Suffolk County Police Department (SCPD) about how Garry Cook fell while constructing
25 a metal shed at the Office;
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1 (b) Making false statements to an OSHA Compliance Safety and Health
2 Officer (CSHO) about how Garry Cook fell while constructing a metal shed at the Office;

3
4 (c) Inducing NORTHRIDGE employees and representatives to make
5 false statements to an OSHA CSHO about how Garry Cook fell while constructing a metal
6 shed at the Office; and

7
8 (d) Making false statements during a DOL deposition about how
9 Garry Cook fell while constructing a metal shed at the Office and other worker safety
10 violations.

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12 14. In furtherance of the conspiracy and to affect its object, within the Eastern
13 District of New York and elsewhere, the Defendant RICHARD ZAGGER, together and
14 with others, did commit and cause the commission of, among others, the following:

15
16 OVERT ACTS

17 (a) On or about December 8, 2018, after Cook's fall, Defendant ZAGGER
18 instructed the remaining three NORTHRIDGE employees to tell law enforcement authorities that
19 Cook fell off a ladder.

20
21 (b) On or about December 8, 2018, during an interview with an SCPD officer,
22 Defendant ZAGGER and two NORTHRIDGE employees represented that Cook fell from an 8-
23 foot ladder.

24 (c) On or about December 8, 2018, in an interview with an SCPD detective,
25 NORTHRIDGE employee (coconspirator 1) made and signed a statement claiming that Cook fell
26 from the sixth rung of a blue ladder while attempting to screw in a roof panel.
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1 (d) On or about December 11, 2018, a representative of NORTHRIDGE told
2 an OSHA CSHO investigating Cook's fall that Cook fell from a ladder.

3 (e) On or about December 11, 2018, Defendant ZAGGER wrote a statement
4 claiming that he did not witness Garry Cook fall because his back was turned.
5

6 (f) On or about and between December 11, 2018, and January 16, 2019,
7 Defendant ZAGGER instructed coconspirator 1 to tell government authorities the crew were
8 using lifts and ladders when assembling the shed roof.

9 (g) On or about January 16, 2019, coconspirator 1 made a misleading
10 statement to an OSHA CSHO by claiming that he was using the scissor lift on the left side of the
11 shed and did not know from where Cook fell.
12

13 (h) On or about January 16, 2019, Defendant ZAGGER submitted the
14 misleading hand-written statement he prepared on December 11, 2018, to an OSHA CSHO.
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16 (i) On or about January 16, 2019, Defendant ZAGGER falsely claimed in a
17 statement to an OSHA CSHO that he did not witness the incident that occurred at the Office on
18 December 8, 2018.

19 (j) On or about January 16, 2019, Defendant ZAGGER falsely claimed in a
20 statement to an OSHA CSHO that Cook and another NORTHRIDGE employee were on the
21 scissor lift immediately prior to Cook falling to the ground.
22

23 (k) On or about March 29, 2019, Defendant ZAGGER falsely stated during a
24 DOL deposition that, at no point during the day Garry Cook fell and was injured, was any worker
25 on the roof of the shed.
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1 (l) On or about March 29, 2019, Defendant ZAGGER misleadingly
2 represented during a DOL deposition that workers were not standing atop the adjacent storage
3 container while assembling the shed.

4 (m) On or about March 29, 2019, Defendant ZAGGER falsely stated during a
5 DOL deposition that Garry Cook was on the scissor lift inside of the shed at the time that he fell.

6 (n) On or about March 29, 2019, Defendant ZAGGER misleadingly
7 represented during a DOL deposition that on December 8, 2018, no employee was installing roof
8 panels other than by using the scissor lift in the shed.
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10 All in violation of 18 U.S.C. § 371.
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12 **COUNT TWO**
13 **Obstruction of Official Proceeding**
14 **(18 U.S.C. § 1505)**
(18 U.S.C. § 2)

15 15. The allegations contained in paragraphs one through ten are realleged and
16 incorporated as if fully set forth in this paragraph.

17 16. On or about December 11, 2018, in the Eastern District of New York, RICHARD
18 ZAGGER, did corruptly endeavor to influence, obstruct, and impede the due and proper
19 administration of law under which a pending proceeding was being had before OSHA, an agency
20 of the executive branch of the Government of the United States, by making a false statement to
21 an OSHA CSHO during a site visit, that is, claiming Garry Cook fell from a ladder on December
22 8, 2018.
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24 All in violation of 18 U.S.C. §§ 1505 and 2.
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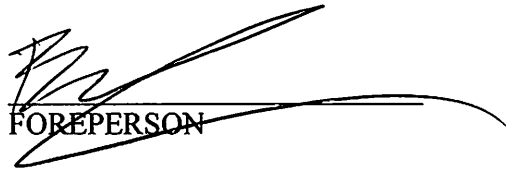
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1 regulatory violations committed on December 8, 2018, that: (i) at no point in the day was a
2 worker on the shed roof; (ii) workers were not standing on the container adjacent to the shed;
3 (iii) while employees were in the shed working on the roof, they were wearing hard hats; (iv) the
4 last time ZAGGER saw Garry Cook, he was on the scissor lift in the shed installing roof panels;
5 (v) no employee was installing roof panels other than on the scissor lift inside the shed; (vi) at
6 the time Garry Cook fell, two other workers were on each end of the front truss with a ladder
7 locking the trusses in; (vii) ZAGGER had no understanding of how the incident occurred; and
8 (viii) ZAGGER did not have a conversation with the other employees about what had happened
9 before the police got there.
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11 All in violation of 18 U.S.C. §§ 1505 and 2.
12

13 A TRUE BILL
14

15 
16 FOREPERSON
17

18 TODD KIM
19 Assistant Attorney General
20 Environment and Natural
21 Resources Division

22 By: R.J. Powers
23 R.J. Powers
24 Senior Trial Attorney
25 Environmental Crimes Section
26
27
28

Rachel M. Roberts
Rachel Roberts
Trial Attorney
Environmental Crimes Section

No. _____

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

RICHARD ZAGGER,

Defendant.

INDICTMENT

(T. 18, U.S.C., §§ 371, 1505, and 2)

A true bill.

Foreperson

Filed in open court this _____ *day,*

of _____ *A.D. 20* _____

Clerk

Bail, \$ _____

R.J. Powers, Senior Trial Attorney, Environmental Crimes Section